

AMENDMENTS TO THE UNITED STATES HOUSING ACT OF 1937

Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) is amended to read as follows:

1437g. Public housing Capital and Operating Funds

(a) Merger into Capital Fund

Except as otherwise provided in the Quality Housing and Work Responsibility Act of 1998, any assistance made available for public housing under section 1437l of this title before October 1, 1999, shall be merged into the Capital Fund established under subsection (d) of this section.

(b) Merger into Operating Fund

Except as otherwise provided in the Quality Housing and Work Responsibility Act of 1998, any assistance made available for public housing under this section before October 1, 1999, shall be merged into the Operating Fund established under subsection (e) of this section.

(c) Allocation amount

(1) In general

For fiscal year 2000 and each fiscal year thereafter, the Secretary shall allocate amounts in the Capital Fund and Operating Funds ^[1] for assistance for public housing agencies eligible for such assistance. The Secretary shall determine the amount of the allocation for each eligible agency, which shall be, for any fiscal year beginning after the effective date of the formulas described in subsections (d)(2) and (e)(2) of this section—

(A) for assistance from the Capital Fund, the amount determined for the agency under the formula under subsection (d)(2) of this section; and

(B) for assistance from the Operating Fund, the amount determined for the agency under the formula under subsection (e)(2) of this section.

(2) Funding

There are authorized to be appropriated for assistance for public housing agencies under this section the following amounts:

(A) Capital Fund

For allocations of assistance from the Capital Fund, \$3,000,000,000 for fiscal year 1999, and such sums as may be necessary for fiscal years 2000, 2001, 2002, and 2003.

(B) Operating Fund

For allocations of assistance from the Operating Fund, \$2,900,000,000 for fiscal year 1999, and such sums as may be necessary for each of fiscal years 2000, 2001, 2002, and 2003.

(d) Capital Fund

(1) In general

The Secretary shall establish a Capital Fund for the purpose of making assistance available to public housing agencies to carry out capital and management activities, including—

- (A) the development, financing, and modernization of public housing projects, including the redesign, reconstruction, and reconfiguration of public housing sites and buildings (including accessibility improvements) and the development of mixed-finance projects;
- (B) vacancy reduction;
- (C) addressing deferred maintenance needs and the replacement of obsolete utility systems and dwelling equipment;
- (D) planned code compliance;
- (E) management improvements, including the establishment and initial operation of computer centers in and around public housing through a Neighborhood Networks initiative, for the purpose of enhancing the self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with onsite computer access and training resources;
- (F) demolition and replacement;
- (G) resident relocation;
- (H) capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents and to improve resident participation;
- (I) capital expenditures to improve the security and safety of residents;
- and**
- (J) homeownership activities, including programs under section 1437z-4 of this title;
- (K) improvement of energy and water-use efficiency by installing fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2-1998 and A112.18.1-2000, or any revision thereto, applicable at the time of installation, and by increasing energy efficiency and water conservation by such other means as the Secretary determines are appropriate; and**
- (L) integrated utility management and capital planning to maximize energy conservation and efficiency measures.**

(2) Formula

The Secretary shall develop a formula for determining the amount of assistance provided to public housing agencies from the Capital Fund for a fiscal year, which shall include a mechanism to reward performance. The formula may take into account such factors as—

- (A) the number of public housing dwelling units owned, assisted, or operated by the public housing agency, the characteristics and locations of the projects, and the characteristics of the families served and to be served (including the incomes of the families);
- (B) the need of the public housing agency to carry out rehabilitation and modernization activities, replacement housing, and reconstruction, construction, and demolition activities related to public housing dwelling units owned, assisted, or operated by the public housing agency, including backlog and projected future needs of the agency;

- (C) the cost of constructing and rehabilitating property in the area;
- (D) the need of the public housing agency to carry out activities that provide a safe and secure environment in public housing units owned, assisted, or operated by the public housing agency;
- (E) any record by the public housing agency of exemplary performance in the operation of public housing, as indicated by the system of performance indicators established pursuant to section 1437d (j) of this title; and
- (F) any other factors that the Secretary determines to be appropriate.

(3) Conditions on use for development and modernization

(A) Development

Except as otherwise provided in this chapter, any public housing developed using amounts provided under this subsection, or under section 1437l of this title as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, shall be operated under the terms and conditions applicable to public housing during the 40-year period that begins on the date on which the project (or stage of the project) becomes available for occupancy.

(B) Modernization

Except as otherwise provided in this chapter, any public housing or portion thereof that is modernized using amounts provided under this subsection or under section 1437l of this title (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998) shall be maintained and operated under the terms and conditions applicable to public housing during the 20-year period that begins on the latest date on which modernization is completed.

(C) Applicability of latest expiration date

Public housing subject to this paragraph or to any other provision of law mandating the operation of the housing as public housing or under the terms and conditions applicable to public housing for a specified length of time, shall be maintained and operated as required until the latest such expiration date.

(e) Operating Fund

(1) In general

The Secretary shall establish an Operating Fund for the purpose of making assistance available to public housing agencies for the operation and management of public housing, including—

- (A) procedures and systems to maintain and ensure the efficient management and operation of public housing units (including amounts sufficient to pay for the reasonable costs of review by an independent auditor of the documentation or other information maintained pursuant to section 1437d (j)(6) of this title by a public housing agency or resident management corporation to substantiate the performance of that agency or corporation);
- (B) activities to ensure a program of routine preventative maintenance;

- (C) anticrime and antidrug activities, including the costs of providing adequate security for public housing residents, including above-baseline police service agreements;
- (D) activities related to the provision of services, including service coordinators for elderly persons or persons with disabilities;
- (E) activities to provide for management and participation in the management and policymaking of public housing by public housing residents;
- (F) the costs of insurance;
- (G) the energy costs associated with public housing units, with an emphasis on energy conservation;
- (H) the costs of administering a public housing work program under section 1437j of this title, including the costs of any related insurance needs;
- (I) the costs of repaying, together with rent contributions, debt incurred to finance the rehabilitation and development of public housing units, which shall be subject to such reasonable requirements as the Secretary may establish;
- (J) the costs associated with the operation and management of mixed finance projects, to the extent appropriate; and
- (K) the costs of operating computer centers in public housing through a Neighborhood Networks initiative described in subsection (d)(1)(E) of this section, and of activities related to that initiative.

(2) Formula

(A) In general

The Secretary shall establish a formula for determining the amount of assistance provided to public housing agencies from the Operating Fund for a fiscal year. The formula may take into account—

- (i) standards for the costs of operating and reasonable projections of income, taking into account the characteristics and locations of the public housing projects and characteristics of the families served and to be served (including the incomes of the families), or the costs of providing comparable services as determined in accordance with criteria or a formula representing the operations of a prototype well-managed public housing project;
- (ii) the number of public housing dwelling units owned, assisted, or operated by the public housing agency;
- (iii) the number of public housing dwelling units owned, assisted, or operated by the public housing agency that are chronically vacant and the amount of assistance appropriate for those units;
- (iv) to the extent quantifiable, the extent to which the public housing agency provides programs and activities designed to promote the economic self-sufficiency and management skills of public housing residents;
- (v) the need of the public housing agency to carry out anti-crime and

anti-drug activities, including providing adequate security for public housing residents;

(vi) the amount of public housing rental income foregone by the public housing agency as a result of escrow savings accounts under section 1437u (d)(2) of this title for families participating in a family self-sufficiency program of the agency under such section 1437u of this title; and

(vii) any other factors that the Secretary determines to be appropriate.

(B) Incentive to increase certain rental income

The formula shall provide an incentive to encourage public housing agencies to facilitate increases in earned income by families in occupancy. Any such incentive shall provide that the agency shall benefit from increases in such rental income and that such amounts accruing to the agency pursuant to such benefit may be used only for low-income housing or to benefit the residents of the public housing agency.

(C) Treatment of savings

(i) **IN GENERAL. – The** treatment of utility and waste management costs under the formula shall provide that a public housing agency shall receive the full financial benefit from any reduction in the cost of utilities or waste management resulting from any contract with a third party to undertake energy conservation improvements in one or more of its public housing projects.

(ii) **THIRD PARTY CONTRACTS. — Contracts described in clause (i) may include contracts for equipment conversions to less costly utility sources, projects with resident-paid utilities, and adjustments to frozen base year consumption, including systems repaired to meet applicable building and safety codes and adjustments for occupancy rates increased by rehabilitation.**

(iii) **TERM OF CONTRACT. – The total term of a contract described in clause (i) shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating system replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.**

(3) Condition on use

No portion of any public housing project operated using amounts provided under this subsection, or under this section as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, may be disposed of before the expiration of the 10-year period beginning upon the conclusion of the fiscal year for which such amounts were provided, except as otherwise provided in this chapter.

(f) Negotiated rulemaking procedure

The formulas under subsections (d)(2) and (e)(2) of this section shall be developed according to procedures for issuance of regulations under the negotiated rulemaking procedure under subchapter III of chapter 5 of title 5.

(g) Limitations on use of funds

(1) Flexibility for Capital Fund amounts

Of any amounts appropriated for fiscal year 2000 or any fiscal year thereafter that are allocated for fiscal year 2000 or any fiscal year thereafter from the Capital Fund for any public housing agency, the agency may use not more than 20 percent for activities that are eligible under subsection (e) of this section for assistance with amounts from the Operating Fund, but only if the public housing agency plan for the agency provides for such use.

(2) Full flexibility for small PHAs

Of any amounts allocated for any fiscal year for any public housing agency that owns or operates less than 250 public housing dwelling units, is not designated pursuant to section 1437d (j)(2) of this title as a troubled public housing agency, and (in the determination of the Secretary) is operating and maintaining its public housing in a safe, clean, and healthy condition, the agency may use any such amounts for any eligible activities under subsections (d)(1) and (e)(1) of this section, regardless of the fund from which the amounts were allocated and provided. This subsection shall take effect on October 21, 1998.

(3) Limitation on new construction

(A) In general

Except as provided in subparagraphs (B) and (C), a public housing agency may not use any of the amounts allocated for the agency from the Capital Fund or Operating Fund for the purpose of constructing any public housing unit, if such construction would result in a net increase from the number of public housing units owned, assisted, or operated by the public housing agency on October 1, 1999, including any public housing units demolished as part of any revitalization effort.

(B) Exception regarding use of assistance

A public housing agency may use amounts allocated for the agency from the Capital Fund or Operating Fund for the construction and operation of housing units that are available and affordable to low-income families in excess of the limitations on new construction set forth in subparagraph (A), but the formulas established under subsections (d)(2) and (e)(2) of this section shall not provide additional funding for the specific purpose of allowing construction and operation of housing in excess of those limitations (except to the extent provided in subparagraph (C)).

(C) Exception regarding formulas

Subject to reasonable limitations set by the Secretary, the formulas established under subsections (d)(2) and (e)(2) of this section may provide additional funding for the operation and modernization costs (but not the initial development costs) of housing in excess of amounts otherwise permitted under this paragraph, and such amounts may be so used, if—

- (i) such units are part of a mixed-finance project or otherwise leverage significant additional private or public investment; and

(ii) the estimated cost of the useful life of the project is less than the estimated cost of providing tenant-based assistance under section 1437f (o) of this title for the same period of time.

(h) Technical assistance

To the extent amounts are provided in advance in appropriations Acts, the Secretary may make grants or enter into contracts or cooperative agreements in accordance with this subsection for purposes of providing, either directly or indirectly—

- (1) technical assistance to public housing agencies, resident councils, resident organizations, and resident management corporations, including assistance relating to monitoring and inspections;
- (2) training for public housing agency employees and residents;
- (3) data collection and analysis;
- (4) training, technical assistance, and education to public housing agencies that are—
 - (A) at risk of being designated as troubled under section 1437d (j) of this title, to assist such agencies from being so designated; and
 - (B) designated as troubled under section 1437d (j) of this title, to assist such agencies in achieving the removal of that designation;
- (5) contract expertise;
- (6) training and technical assistance to assist in the oversight and management of public housing or tenant-based assistance;
- (7) clearinghouse services in furtherance of the goals and activities of this subsection; and
- (8) assistance in connection with the establishment and operation of computer centers in public housing through a Neighborhood Networks initiative described in subsection (d)(1)(E) of this section.

As used in this subsection, the terms “training” and “technical assistance” shall include training or technical assistance and the cost of necessary travel for participants in such training or technical assistance, by or to officials and employees of the Department and of public housing agencies, and to residents and to other eligible grantees.

(i) Eligibility of units acquired from proceeds of sales under demolition or disposition plan

If a public housing agency uses proceeds from the sale of units under a homeownership program in accordance with section 1437z-4 of this title to acquire additional units to be sold to low-income families, the additional units shall be counted as public housing for purposes of determining the amount of the allocation to the agency under this section until sale by the agency, but in no case longer than 5 years.

(j) Penalty for slow expenditure of capital funds

(1) Obligation of amounts

Except as provided in paragraph (4) and subject to paragraph (2), a public housing agency shall obligate any assistance received under this section not later than 24 months after, as applicable—

- (A) the date on which the funds become available to the agency for obligation in the case of modernization; or

(B) the date on which the agency accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units.

(2) Extension of time period for obligation

The Secretary—

(A) may, extend the time period under paragraph (1) for a public housing agency, for such period as the Secretary determines to be necessary, if the Secretary determines that the failure of the agency to obligate assistance in a timely manner is attributable to—

- (i) litigation;
- (ii) obtaining approvals of the Federal Government or a State or local government;
- (iii) complying with environmental assessment and abatement requirements;
- (iv) relocating residents;
- (v) an event beyond the control of the public housing agency; or
- (vi) any other reason established by the Secretary by notice published in the Federal Register;

(B) shall disregard the requirements of paragraph (1) with respect to any unobligated amounts made available to a public housing agency, to the extent that the total of such amounts does not exceed 10 percent of the original amount made available to the public housing agency; and

(C) may, with the prior approval of the Secretary, extend the time period under paragraph (1), for an additional period not to exceed 12 months, based on—

- (i) the size of the public housing agency;
- (ii) the complexity of capital program of the public housing agency;
- (iii) any limitation on the ability of the public housing agency to obligate the amounts allocated for the agency from the Capital Fund in a timely manner as a result of State or local law; or
- (iv) such other factors as the Secretary determines to be relevant.

(3) Effect of failure to comply

(A) Prohibition of new assistance

A public housing agency shall not be awarded assistance under this section for any month during any fiscal year in which the public housing agency has funds unobligated in violation of paragraph (1) or (2).

(B) Withholding of assistance

During any fiscal year described in subparagraph (A), the Secretary shall withhold all assistance that would otherwise be provided to the public housing agency. If the public housing agency cures its failure to comply during the year, it shall be provided with the share attributable to the months remaining in the year.

(C) Redistribution

The total amount of any funds not provided public housing agencies by operation of this paragraph shall be allocated for agencies determined under section 1437d (j) of this title to be high-performing.

(4) Exception to obligation requirements

(A) In general

Subject to subparagraph (B), if the Secretary has consented, before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, to an obligation period for any agency longer than provided under paragraph (1), a public housing agency that obligates its funds before the expiration of that period shall not be considered to be in violation of paragraph (1).

(B) Prior fiscal years

Notwithstanding subparagraph (A), any funds appropriated to a public housing agency for fiscal year 1997 or prior fiscal years shall be fully obligated by the public housing agency not later than September 30, 1999.

(5) Expenditure of amounts

(A) In general

A public housing agency shall spend any assistance received under this section not later than 4 years (plus the period of any extension approved by the Secretary under paragraph (2)) after the date on which funds become available to the agency for obligation.

(B) Enforcement

The Secretary shall enforce the requirement of subparagraph (A) through default remedies up to and including withdrawal of the funding.

(6) Right of recapture

Any obligation entered into by a public housing agency shall be subject to the right of the Secretary to recapture the obligated amounts for violation by the public housing agency of the requirements of this subsection.

(k) Emergency reserve and use of amounts

(1) Set-asides

In each fiscal year after fiscal year 1999, the Secretary shall set aside, for use in accordance with this subsection, not more than 2 percent of the total amount made available to carry out this section for such fiscal year. In addition to amounts set aside under the preceding sentence, in each fiscal year the Secretary may set from the total amount made available to carry out this section for such fiscal year not more than \$20,000,000 for the Operation Safe Home program administered by the Office of the Inspector General of the Department of Housing and Urban Development, for law enforcement efforts to combat violent crime on or near the premises of public and federally assisted housing.

(2) Use of funds

Amounts set aside under paragraph (1) shall be available to the Secretary for use for assistance, as provided in paragraph (3), in connection with—

(A) emergencies and other disasters; and

(C) ^[2] housing needs resulting from any settlement of litigation; and

(3) Eligible uses

In carrying out this subsection, the Secretary may use amounts set aside under this subsection to provide—

(A) assistance for any eligible use under the Operating Fund or the Capital Fund established by this section; or

(B) tenant-based assistance in accordance with section [1437f](#) of this title.

(4) Limitation

With respect to any fiscal year, the Secretary may carry over not more than a total of \$25,000,000 in unobligated amounts set aside under this subsection for use in connection with the activities described in paragraph (2) during the succeeding fiscal year.

(5) Publication

The Secretary shall publish the use of any amounts allocated under this subsection relating to emergencies (other than disasters and housing needs resulting from any settlement of litigation) in the Federal Register.

(l) Treatment of nonrental income

A public housing agency that receives income from nonrental sources (as determined by the Secretary) may retain and use such amounts without any decrease in the amounts received under this section from the Capital or Operating Fund. Any such nonrental amounts retained shall be used only for low-income housing or to benefit the residents assisted by the public housing agency.

(m) Provision of only capital or operating assistance

(1) Authority

In appropriate circumstances, as determined by the Secretary, a public housing agency may commit capital assistance only, or operating assistance only, for public housing units, which assistance shall be subject to all of the requirements applicable to public housing except as otherwise provided in this subsection.

(2) Exemptions

In the case of any public housing unit assisted pursuant to the authority under paragraph (1), the Secretary may, by regulation, reduce the period under subsection (d)(3) or (e)(3) of this section, as applicable, during which such units must be operated under requirements applicable to public housing. In cases in which there is commitment of operating assistance but no commitment of capital assistance, the Secretary may make section 8 [42 U.S.C. [1437f](#)] requirements applicable, as appropriate, by regulation.

(n) Treatment of public housing

(1) Certain State and city funded housing

(A) In general

Notwithstanding any other provision of this section—

(i) for purposes of determining the allocations from the Operating and Capital Funds pursuant to the formulas under subsections (d)(2) and (e)(2) of this section and determining assistance pursuant to section 519(e) of the Quality Housing and Work Responsibility Act of 1998 and under section [1437g](#) or [1437l](#) of this title (as in effect before October 21, 1998), for any period before the implementation of such formulas, the Secretary shall deem any covered locally developed public housing units as public housing units developed under this subchapter and such units shall be eligible for such assistance; and

(ii) assistance provided under this section, under such section 518 (d)(3),^[3] or under such section [1437g](#) or [1437l](#) of this title to any

public housing agency may be used with respect to any covered locally developed public housing units.

(B) Covered units

For purposes of this paragraph, the term “covered locally developed public housing units” means—

- (i) not more than 7,000 public housing units developed pursuant to laws of the State of New York and that received debt service and operating subsidies pursuant to such laws; and
- (ii) not more than 5,000 dwelling units developed pursuant to section 34 of chapter 121B of the General Laws of the State of Massachusetts.

(2) Reduction of asthma incidence

Notwithstanding any other provision of this section, the New York City Housing Authority may, in its sole discretion, from amounts provided from the Operating and Capital Funds, or from amounts provided for public housing before amounts are made available from such Funds, use not more than exceeding ^[4] \$500,000 per year for the purpose of initiating, expanding or continuing a program for the reduction of the incidence of asthma among residents. The Secretary shall consult with the Administrator of the Environmental Protection Agency and the Secretary of Health and Human Services to identify and consider sources of funding for the reduction of the incidence of asthma among recipients of assistance under this subchapter.

(3) Services for elderly residents

Notwithstanding any other provision of this section, the New York City Housing Authority may, in its sole discretion, from amounts provided from the Operating and Capital Funds, or from amounts provided for public housing before the amounts are made available from such Funds, use not more than \$600,000 per year for the purpose of developing a comprehensive plan to address the need for services for elderly residents. Such plan may be developed by a partnership created by such Housing Authority and may include the creation of a model project for assisted living at one or more developments. The model project may provide for contracting with private parties for the delivery of services.

(4) Effective date

This subsection shall apply to fiscal year 1999 and each fiscal year thereafter.